

SPENCER ISHMAEL
Claimant

KANSAS CITY MECHANICAL, INC.
Respondent

ROYAL INSURANCE COMPANY OF AMERICA
Insurance Carrier

)
)
)
)
)
)
)
)
)
)

ORDER

ISSUES

Respondent argues claimant's current need for medical treatment is not the result of the January 18, 1996, injury, but instead is, the result of an intervening accident or accidents occurring while claimant continues to work for the respondent.

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The question of whether claimant's current need for medical treatment is the result of the January 18, 1996, work-related accident or is instead the result of claimant's work activities, after he met maximum medical improvement, gives rise to the question of whether claimant's need for medical treatment is a natural consequence of the January 18, 1996, accident or whether claimant has suffered an intervening accidental injury. The

issue, therefore, is whether claimant suffered an accidental injury arising out of and in the course of his employment. This is a jurisdictional issue under K.S.A. 1997 Supp. 44-534a and will be considered by the Appeals Board.

Claimant injured his low back while performing his heavy work activities as a working pipe fitter foreman for the respondent on January 18, 1996. Respondent provided medical treatment for the low-back injury through orthopedic surgeon John A. Pazell, M.D. Dr. Pazell had previously treated claimant for low-back injuries in 1988, 1990, and 1994. Dr. Pazell initially followed claimant from February 12, 1996, through November 21, 1996, for this injury. Dr. Pazell treated claimant conservatively with physical therapy, medication, and exercises.

In a report dated November 21, 1996, Dr. Pazell determined claimant had met maximum medical improvement for the January 18, 1996, injury. His final diagnosis was herniated intervertebral disc at the L4-5 level with superimposed lumbar strain and left hip strain. The doctor opined that claimant had a permanent functional disability rating of 17 percent but placed no work restrictions on claimant. During this period of Dr. Pazell's treatment, claimant had performed his regular work activities for the respondent. However, Dr. Pazell's report also indicated that claimant would require future medical treatment which would include anti-inflammatory medication over a long term basis, occasional office visits for acute episodes of back and leg pain, epidural steroid injections, and a possible referral for surgical intervention.

Dr. Pazell's medical records, admitted into evidence at the preliminary hearing, show that the claimant returned to see Dr. Pazell for low-back pain on at least three occasions since claimant had met maximum medical improvement. Claimant testified he continues to take Indocin, an anti-inflammatory medication, daily. Dr. Pazell noted during claimant's August 25, 1997, visit that he believed claimant's problems were a continuation of his previous problems.

Claimant testified, although he has flare-ups with his low-back condition, he continues to perform heavy physical work as a pipe fitter foreman for the respondent. However, claimant testified he has had no specific incidents at work that have caused his back to worsen. Claimant further testified after the January 18, 1996, accident he had never been symptom free. Also, claimant testified he had some symptoms at the time Dr. Pazell determined he had met maximum medical improvement on November 21, 1996.

Respondent claims the preliminary hearing record proves claimant's heavy work activities after November 21, 1996, have permanently aggravated his preexisting low-back condition resulting in a new and separate work-related accidental injury. The Appeals Board disagrees with the respondent's argument. The Appeals Board finds, from the record as it currently exists, that claimant's testimony and Dr. Pazell's medical treatment records prove that claimant's current need for medical treatment is the result of the January 18, 1996, accidental injury and not a new and separate injury. The Appeals Board

concludes there is no evidence in the preliminary hearing record that proves claimant's low-back condition is any worse than it was at the time claimant was determined by Dr. Pazell to have met maximum medical improvement on November 21, 1996. In fact, at that time, Dr. Pazell believed claimant, because of the January 18, 1996, injury, would continue to need future medical treatment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Robert H. Foerschler's Preliminary Decision dated July 9, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Michael A. Preston, Overland Park, KS
Clifford K. Stubbs, Lenexa, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director